



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 19th day of July, 1996

SERVED: July 22, 1996

Complaint of

NORTHWEST AIRLINES, INC.

against

THE GOVERNMENT OF INDONESIA

under 49 U.S.C. section 41310

Docket OST-96-1547

ORDER SEEKING COMMENTS

On July 15, 1996, Northwest Airlines, Inc. (Northwest), filed a complaint under 49 U.S.C. section 41310 (formerly section 2(b) of the International Air Transportation Fair Competitive Practices Act of 1974 (IATFPCA), as amended) against the Government of the Republic of Indonesia (Indonesia). Northwest states that Indonesia has prevented Northwest from exercising its bilateral right to carry fifth-freedom traffic between Japan and Indonesia on Northwest's proposed Seattle-Osaka-Jakarta service, and that Indonesia's failure to authorize the service violates the U.S.-Indonesia Air Transport Agreement.

In support of its complaint, Northwest states that Section 1 of the Route Schedule to the U.S.-Indonesian Air Transport Services Agreement of January 15, 1968, as amended, authorizes Northwest's proposed Seattle-Osaka-Jakarta service, including the right to carry fifth-freedom traffic, and that on May 14, 1996, the Government of Indonesia orally approved Northwest's proposed service and specifically authorized Northwest to carry fifth-freedom traffic between Osaka and Jakarta for services to begin July 1, 1996. Northwest states that it did not learn until June 27, 1996, three days prior to the scheduled startup, that Indonesia intended to "renege on its earlier assurances and issue Northwest's operating permit with a restriction prohibiting Northwest from carrying fifth-freedom traffic."¹ Northwest argues that Indonesia's action has caused Northwest grave harm, and that by denying Northwest its bilateral right to carry fifth-freedom traffic between Osaka and Jakarta, the Indonesian Government has effectively precluded Northwest from serving the U.S.-Indonesia market altogether. It further maintains that by relying on the Government of Indonesia's oral approval, Northwest incurred substantial marketing, promotional and operational expenses in preparation of the July 1 startup and was given only three days, upon issuance of the Indonesian Government's June 27 decision, to reaccommodate passengers and cargo already booked for those services and to redeploy crew and aircraft. As a result, Northwest states that it was forced to cancel the entire Jakarta summer season on July 11, incurring a loss of

¹ Complaint of Northwest at 3.

\$6.4 million. Northwest argues that Indonesia's action is in clear violation of the bilateral agreement and warrants remedial action under the statute.

In this regard, Northwest requests that the Department immediately require Garuda Indonesia Airlines to cancel all five of its Jakarta-U.S. flights. Because Northwest had proposed to institute its service July 1, and Indonesia's actions have required cancellation of its entire summer program, Northwest requests that the Department take prompt and immediate action on its complaint.

Section 41310 provides that we shall approve, deny, dismiss, or set a complaint for hearing, or institute other procedures proposing remedial action, within 60 days after receipt of the complaint. We may extend the period for taking action up to 90 days from the date of the complaint if we conclude that it is likely that the complaint can be resolved satisfactorily through negotiations. We may further extend the action deadline up to 180 days from receipt of the complaint, in 30-day increments, if we find that intergovernmental negotiations have progressed to a point that a satisfactory resolution of the complaint appears imminent.

In order to develop the record for our consideration of this matter, we invite any interested persons to answer Northwest's complaint in Docket OST-96-1547. Answers may be filed no later than August 1, 1996. Answers filed should include all data, evidence, and arguments upon which the respondents rely to support their positions, and should cover all substantive and procedural issues that they wish the Department to consider. Replies to any answers should be filed no later than August 6, 1996.²

After receipt and consideration of responsive pleadings and any supporting evidence submitted, we will issue a further order in this proceeding.

² We assign to the Director, Office of International Aviation, the authority to dispose of all procedural questions arising in this proceeding, except for requests for oral evidentiary hearing, until further Department order.

ACCORDINGLY,

1. We invite interested persons to file answers to the complaint of Northwest Airlines, Inc., in Docket OST-96-1547 no later than August 1, 1996. ³ If answers are filed, replies to those answers should be filed no later than August 6, 1996. Answers to the complaint and replies, if any, should be served upon the persons named in ordering paragraph 3, below;
2. If timely and properly supported answers are filed, we will give consideration to the matters and issues raised by the answers before we take further action; and
3. We will serve this order on Northwest Airlines, Inc.; Aloha Airlines, Inc.; American Airlines, Inc.; Amerijet International, Inc.; Continental Airlines, Inc.; Continental Micronesia, Inc.; Delta Air Lines, Inc.; Emery Worldwide Airlines; Evergreen International Airlines; Federal Express Corporation; Hawaiian Airlines, Inc.; Polar Air Cargo, Inc.; Trans World Airlines, Inc.; United Air Lines, Inc.; United Parcel Service, Inc.; World Airways, Inc.; Garuda Indonesian Airlines; Japan Air Lines Company, Ltd.; Nippon Cargo Airlines; Dallas/Fort Worth; Los Angeles Department of Airports; the City of Seattle; the United States Department of State (Office of Aviation Negotiations); the Assistant U.S. Trade Representative (Asia), the Office of the United States Trade Representative; the United States Department of Commerce (Office of Service Industries); the Ambassadors of Indonesia and Japan in Washington, D.C.; and the Air Transport Association.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this order is available on the World Wide Web at
<http://www.dot.gov/dotinfo/general/orders/aviation.html>.*

³ The original submission is to be unbound and without tabs on 8½" x 11" white paper using dark ink (not green).